IN THE

SUPREME COURT OF THE UNITED STATES

83 - 6258

NO: ~~83-6263~~

ROBERT SAWYER,
PETITIONER

VERSUS

LOUISIANA,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

RESPONSE OF STATE OF LOUISIANA

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OPINIONS BELOW

Petitioner's sentence was originally affirmed in November of 1982. State v. Sawyer, 422 So.2d 95 (La. 1982). Petitioner's sentence was again affirmed in November of 1983. State v. Sawyer, No. 81-KA-1566 (La. Nov. 28, 1983).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

I. Whether the failure of one statutory aggravating circumstance invalidates a sentence which is supported by at least one valid statutory aggravating circumstance.

II. Whether evidence of a prior conviction is admissible at a sentencing hearing.

III. Whether petitioner's sentence was imposed under the influence of arbitrary factors.

STATEMENT OF THE CASE

A. Course Of Proceedings

Petitioner, Robert Sawyer, was convicted of first degree murder on September 19, 1980; petitioner was sentenced to death on October 16, 1980.

Petitioner's sentence was affirmed in November of 1982.

Petitioner's case was remanded by the United States Supreme Court to the Louisiana Supreme Court in July of 1983. Sawyer v. Louisiana, ____U.S.____, 103 S.Ct. 3567, 77 L.Ed.2d 1407 (1983).

Petitioner's sentence was again affirmed in November of 1983.

B. Statement Of The Facts

The facts of the case are stated fully in the Louisiana Supreme Court decision as reported at 422 So.2d 95, 97 (La. 1982). The following facts are pertinent to the instant petition. At petitioner's sentencing hearing the prosecution introduced evidence of a guilty plea petitioner had entered in Arkansas on a charge of manslaughter. Petitioner then cross-examined the State's witness, called an additional witness, and testified himself. The facts underlying the manslaughter plea were brought out in great detail. On petitioner's initial appeal to the Louisiana Supreme Court the court found that evidence of the manslaughter plea had been properly admitted. Through the manslaughter plea was not properly a statutory aggravating circumstance. State v. Sawyer, 422 So.2d 95, 103 (La. 1982). The court further found that petitioner had been prepared for and had actively participated in the sentencing hearing. Sawyer, 422 So.2d at 104.

LAW AND ARGUMENT

Petitioner, Robert Sawyer, asks this Court to review Louisiana's recent decision upholding his sentence of death; petitioner's sentence was upheld for a second time by the Louisiana Supreme Court in November of 1983. State v. Sawyer, No. 81-KA-1566 (La. Nov. 28, 1983) (on remand). In his application petitioner argues that the Louisiana decision is in violation of the guidelines established in Zant: petitioner contends that the Louisiana Court was in error in allowing his conviction to stand after the court found one of the statutory aggravating circumstances supporting the sentence to be invalid (the fact of a previous guilty plea on petitioner's part). Petitioner maintains that the Louisiana Court was in error in allowing this fact into evidence at petitioner's sentencing

hearing; petitioner further maintains that this evidence disproportionately affected the jury's sentencing choice. Respondent, the State of Louisiana, respectfully submits that petitioner is in error in his interpretation of Louisiana's capital sentencing scheme; petitioner is particularly in error in his understanding of the function of the statutory aggravating circumstances. A review of Louisiana's capital sentencing scheme shows that it is almost indistinguishable (in one significant aspect) from the scheme recently approved by this Court in Zant; the failure of one statutory aggravating circumstance does not of itself invalidate a sentence of death. Zant v. Stephens, ___U.S.___, 103 S.Ct. 2733, 77L.Ed.2d 253 (1983). Further, the Louisiana scheme clearly invites the introduction of a fairly wide spectrum of evidence (in addition to the statutory aggravating circumstances) at the capital sentencing hearing.

I. SUFFICIENCY OF AGGRAVATING CIRCUMSTANCES

Petitioner's case was remanded to the Louisiana Supreme Court in July of 1983 for further consideration "in light" of Zant v. Stephens. Sawyer v. Louisiana, ___U.S.___, 103 S.Ct. 3567, 77 L.Ed.2d 1407 (1983). The Louisiana Supreme Court opinion on remand was issued in November of 1983: the court addressed three questions, one of which was the function of the statutory aggravating circumstances (La.C.Cr.P. art. 905.4). The court specifically found that the failure of one aggravating circumstance would not impair the validity of a death sentence which was supported by at least one other valid statutory aggravating circumstance. Louisiana's capital sentencing scheme, as noted by the Louisiana Supreme Court, is identical in this one function to the Georgia statute approved in Zant. Saywer, slip opinion at 6.

Petitioner's sentence was first affirmed in October of 1982. State v. Sawyer, 422 So.2d 95 (La. 1982). The court affirmed its prior holding in November of 1983. The two opinions, read together, offer the following interpretation to Louisiana's capital sentencing scheme. La.C.Cr.P. art. 905 et seq. . . . .

It was established in the original Sawyer opinion that La.C.Cr.P. art. 905.3 requires the finding of only one statutory aggravating circumstance to support consideration of the death penalty; the existance of one aggravating circumstance is sufficient to place a defendant in the category of offenders exposed to the death penalty.[1] Sawyer, 422 So.2d

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1 The Louisiana Supreme Court has consistently characterized additional aggravating circumstances as unnecessary. State v. Martin, 376 So.2d 300, 312 (La. 1979); State v. Sonnier, 379 So.2d 1336, 1359 (La. 1980); State v. Narcisse, 426 So.2d 118, 138 (La. 983); State v. Lindsey, 428 So.2d 420, 424 (La. 1983).

at 101-2. The court explained more fully in the second opinion: once a single aggravating circumstance is found, the jury may consider additional evidence to make the final determination whether or not to recommend the death penalty. The finding of statutory aggravating circumstances is unnecessary to advance a case to consideration of whether the death penalty is appropriate; the statutory aggravating circumstances are simply apreliminary step before any balancing process can be undertaken. Sawyer, slip opinion at 6-7.

The Louisiana Supreme Court has noted the similarity between the Georgia's statute and the Louisiana one. The Louisiana statute describes "two aspects" at the sentencing phase, much like the "two planes" described by the Georgia statute. Like the Georgia statutory aggravating circumstances, the Louisiana statutory aggravating circumstances are not weighed in any particular manner. Sawyer, slip opinion at 7; Zant, 103 S.Ct. at 2741, 77 L.Ed.2d at 247. Rather, the Louisiana statutory aggravating circumstances "circumscribe" the class of persons who are death eligible. Sawyer, slip opinion at 7; Zant, 103 S.Ct. at 2743, 77 L.Ed.2d at 250. Further, under Louisiana law, the sentencing jury is free to return a life sentence though they have found the presence of any statutory aggravating circumstance. La.C.Cr.P. art. 905.3; La.C.Cr.P. art. 905.6; State v. Watson, 423 So.2d 1130, 1135 (La. 1982).

The Louisiana Supreme Court has specifically held that the failure of one aggravating circumstance does not invalidate a sentence which is supported by at least one other valid aggravating circumstance. Sawyer, 422 So.2d at 101. The Louisiana Supreme Court affirmed the jury findings of two other statutory aggravating circumstances in petitioner's case: the court affirmed the finding that the murder had been committed during the perpetration of an aggravated arson; the court also affirmed the finding that the murder had been committed in an especially cruel manner (the court refers to the facts of petitioner's case as gruesome and depraved in its 1983 opnion). The State respectfully submits that the failure of petitioner's 1974 guilty plea as a statutory aggravating circumstances does not invalidate petitioner's instant sentence; the remaining statutory aggravating circumstances are adequate to support petitioner's death sentence.

II. ADMISSABILITY OF PETITIONER'S 1974 GUILTY PLEA

Once a defendant is found death eligible by the finding of at least one statutory aggravating circumstance, the jury considers any additional relevant evidence offered in its final determination as to the appropriate sentence. La.C.Cr.P. Art. 905.2; La.C.Cr.P.

art. 905.3. The state respectfully submits that petitioner is in error to argue that evidence of his 1974 guilty plea was inadmissible at the instant sentence hearing; the Louisiana Supreme Court has clearly held that the evidence of petitioner's guilty plea, though not a valid statutory aggravating circumstance, was admissible as evidence of petitioner's character or of his propensities to commit crime. La.C.Cr.P. art 905.2. The State respectfully submits that the Louisiana approach, which encourages the admission of all relevant evidence, has been approved by this Court as an effective method of "individualizing" sentences.

In its original affirmal of petitioner's sentence the Louisiana Supreme Court found the evidence of petitioner's manslaughter plea admissible as evidence of petitioner's character--one of the "principal" issues at any sentencing hearing. Sawyer, 422 So.2d at 103-4. The court here found the evidence admissible over hearsay objections; the court noted that the documents introduced to verify the fact of petitioner's plea had been properly authenticated. Sawyer, 422 So.2d at 102. In the court's recent opinion the court again ruled that the evidence was admissible; the court noted that a conviction per se puts the convicted one's character at issue. Sawyer, slip opinion at 10. The court again stressed that reference to rules of evidence found in the capital sentencing scheme were merely to assure the competency of evidence introduced. (See also State v. Jordon, 440 So.2d 716, 719 (La. 1983).

The Louisiana Supreme Court has acknowledged this Court's approval of the use of extensive evidence at sentencing hearings in the interest of "individualizing" sentences. Sawyer, 422 So.2d at 103. This Court has held that sentencing should be done in an "informed" manner and that the sentence may reflect the jury's evaluation of the character of the accused. Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 2832, 49 L.Ed.2d 859, 883 (1976). This Court has further held that restrictions on evidence at sentencing hearings should be limited; this Court has stated that arguments at this phase of trial should be open and as far ranging as possible. Gregg, 96 S.Ct. at 2939, 49 L.E.2d at 891. The sentencing jury should have before it all relevant information which will encourage an individualized sentence. Jurek v. Texas, 428 U.S. 262, 96 S.Ct. 2950, 2958, 49 L.Ed.2d 929, 941 (1976). This Court has also stated that beyond certain limitations, it will defer to the State's choice in substantive factors deemed relevant to sentencing procedures. California v. Ramos, ___U.S.___, 103 S.Ct. 3446, 3453, 77 L.Ed.2d 1171, 1181 (1983). This Court has simply acknowledged that the sentencing phase of a criminal trial is of a

different nature from the guilt phase; the jury is free to consider a "myriad" of otherwise objectionable facts at the sentencing phase. Ramos, 103 S.Ct. 3456, 77 L.Ed.2d 1185.[2]

Petitioner cannot object that the admission of his record offends the Constitution; this Court has specifically upheld the admissability of prior records in sentencing proceedings. Zant, 103 S.Ct. at 2748, 77 L.Ed.2d at 256; Barclay v. Florida, ___U.S.___, 103 S.Ct. 3418, 3427, 77 L.Ed.2d 1134, 1178 (1983). Petitioner does not suggest that the Louisiana Court has allowed "constitutionally protected" behavior to enter into the sentencing determination (see Zant, 103 S.Ct. at 2746, 77 L.Ed.2d at 245). Nor does petitioner allege that the plea was incompetent for any reason.

Finally, the Louisiana court specifically found that petitioner had been able to rebut the evidence presented by the State (see Zant, 103 S.Ct. at 2748, 77 L.Ed.2d at 256). The court found that defendant had been prepared to meet the evidence and that he had done so. Sawyer, 422 So.2d at 104.

The scope of evidence admissible at a sentencing hearing is a matter of state law (see Sawyer, 422 So.2d at 102, footnote no. 13). The Louisiana Supreme Court found the evidence of petitioner's record to be admissible at the instant sentencing hearing; this finding should be binding. Brown v. Ohio, 432 U.S. 161, 975 S.Ct. 2221, 53 L.Ed.2d 187 (1977). Garner v. Louisiana, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed.2d 207 (1961); Wainwright v. Goode, ___U.S.___, 104 S.Ct. 378, 382, 78 L.Ed.2d 187, 192 (1983). Petitioner has not cited any errors of Constitutional dimension. The evidence was, contrary to petitioner's assertions, "otherwise admissible". Gregg, 96 S.Ct. at 2909, 49 L.Ed.at 859; Zant, 103 S.Ct. at 2750, 77 L.Ed.2d at 258.

III. PRESENCE OF ARBITRARY FACTORS

The Louisiana Supreme Court has reviewed petitioner's sentence twice; it has found each time that the sentence was not induced by arbitrary factors. The court specifically found, in its latest opinion, that the "overwhelming evidence" of petitioner's guilt and the heinous nature of the offense must surely have motivated the jury to sentence petitioner

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[2]The Michelson case, cited by petitioner, restricts the scope of evidence at the guilt phase of trial. Michelson v. United States, 335 U.S. 469, 69 S.Ct. 213, 93 L.Ed. 168 (1948).

to death. The jury was furnished with ample evidence offered in mitigation of petitioner's offense. Further, as the Louisiana Supreme Court noted, the jury was not instructed to weigh the evidence presented in any particular manner.

The State respectfully submits that the Louisiana Supreme Court's finding that petitioner's sentence is valid is not so "unprincipled" as to violate the Constitution. Barclay, 103 S.Ct. at 3423, 3427, 77 L.Ed.2d at 1142, 1148.

CONCLUSION

The limited function served by a jury's finding of a statutory aggravating circumstance does not render the Louisiana death penalty scheme unconstitutional as it is applied in the case.

In this case, the essential elements of a constitutional death penalty are present. The jury has made an individualized determination based on the defendant and the crime and the State Supreme Court has determined that the sentence was not arbitrary or disproportionate.

Therefore, this application is without merit and should be denied.

Respectfully Submitted,

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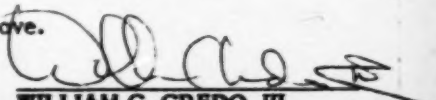
CERTIFICATE

I, **William C. Credo, III,** a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 5th day of March, 1984, I served three copies of the brief in opposition on each of the parties thereto, as follows:

1. On petitioner, Robert Sawyer, through his counsel of record, Catherine Hancock, **Esq. 7031 Freret Street, New Orleans, 70118.**

IT IS FURTHER certified that all parties required to be served have been served, and that the list of such parties is as set forth above.



WILLIAM C. CREDO, III